RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100963 SEPARATION DATE: 20071120

BOARD DATE: 20120613

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Staff Sergeant/E-5 (3P051A/Security Forces Journeyman), medically separated for chronic right shoulder pain due to multiple structural injuries. The right-handed CI had gradual onset of right shoulder pain which worsened over 5-6 years. Arthroscopic surgical decompression, physical therapy, injections and medications including narcotics and muscle relaxers were only partially effective. The CI did not respond adequately to treatment and was unable to perform within her Air Force Specialty (AFS) especially with K-9 handling, wear of required military protective gear, or meet physical standards. She was issued a U4 profile, placed on limited duty and underwent a Medical Evaluation Board (MEB). Persistent right shoulder pain was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions appeared on the MEB’s submission. The PEB adjudicated the chronic right shoulder pain due to multiple structural injuries condition as unfitting, rated 20% with application of DoDI 1332.39 and the Veterans Administration Schedule for Rating Disabilities (VASRD), respectively. The CI appealed to the Formal PEB (FPEB) and was then medically separated with a 20% combined disability rating.

CI CONTENTION: “(R) shoulder condition is considered chronic, Additionall (sic) surgery performed IN 2010, Condition Requires continous (sic) treatment Including use of a TENS unit, and daily use of muscle Relaxer (Flexeril), pain killer (Tramadol) and Antiinflamitory (sic) (Mobic). Additionally tension headaches and insomna (sic) which were noted on medical evaluation board summary but never rated or referenced in board decision (sic). VA Rated (R) Shoulder as 30%. (R) Shoulder was injured During Repeative (sic) trauma directly Related to firing weapons (M-16 – M-60 – 9mm) And working as a Military Police K-9 handler, both at Home Station and Deployments.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions will be reviewed in all cases. The right shoulder condition as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and is addressed below. The other requested conditions of tension headaches and insomnia, or other conditions rated by the Department of Veterans’ Affairs (DVA) at or after separation and listed on the DD Form 294 application, are not within the Board’s purview. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Air Force Board for the Correction of Military Records (AFBCMR).

RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20070928** | | | **VA (7 Mo. After Separation) – All Effective Date 20071121** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Rt Shoulder Pain S/P Injuries | 5304 | 20% | S/P Rt Subacromial Decomp Rt Shoulder w/ Spasm | 5201 | 20%\* | 20090327 |
| ↓No Additional MEB/PEB Entries↓ | | | Chronic Lumbar Strain | 5237 | 10% | 20080606 |
| Tension HAs | 8199-8100 | 30%\*\* | 20090327 |
| Insomnia | 6847 | NSC | 20080606 |
| 0% x 0\* | | | 20080606 |
| **Combined: 20%** | | | **Combined: 50%\*** | | | |

\* VARD 20090608 (DRO Review) changed rt shoulder code / DX, rating to 20%; rt shoulder was temporarily rated at 100% from 20100429 to 20100801 and to 30% on 20100909. VARD 20090629 (DRO Review) increased tension HAs from 0% to 10% and VARD 20090629 (DRO Review) increased tension HAs to 30% effective retroactive to 20071121 (combined 50%).

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which her service-incurred condition continues to burden her. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the DVA, operating under a different set of laws (Title 38, United States Code). The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation. The Board further acknowledges the CI’s contention for ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance and is limited to PEB conditions as noted above. The DVA, however, is empowered to compensate service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

Right Shoulder Condition. The CI was right handed (major/dominant). There were two goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

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| Right Shoulder ROM | MEB ~9 Mo. Pre-Sep | PT~2 Mo. Pre-Sep | VA C&P ~6 Mo. Post-Sep |
| Flexion (0-180⁰) | 160⁰ | Full | 120⁰ [60⁰]\* |
| Abduction (0-180⁰) | 120⁰ | Full | 110⁰[55⁰]\* |
| Comments | Pain with motion; symmetric ROM with unaffected side; motor, sensory intact; mild pain on Neer/Hawkin’s; no instability | Painful motion; motor 4/5 (5/5 nl) for abduction and ext rotation; mild sx w/ impingement; tender to palpation; sensory and reflexes normal | Painful motion; wearing nerve blocking unit; motor 4/5 all ranges; sensory and reflexes normal; \*DeLuca pain, weakness, fatigability—estimated flare-ups reduce above ROM 50% |
| §4.71a Rating | 10% (PEB 20%) | 10%-20% (FPEB 20%) | 20%-30% (VA 20%) |

\*Initial VARD misquoted the DeLuca as 25% reduction vs 50% [`~82⁰] vs [55⁰] from C&P ~6mo

At the MEB exam, the CI reported right shoulder pain worsening throughout the day and following activity, arm weakness, and awakening at night with her entire arm tingling. The MEB physical exam noted symmetric shoulder ROMs (charted above); normal strength, reflexes, sensory exam, and muscle bulk. Tests of instability were negative and there was no tenderness. MRI indicated tendinosis, bursitis, mild degeneration and “mild atrophy of supraspinatus and infraspinatus muscles, which may be due to disuse” as well as a partial tear of the supraspinatus tendon. The additional shoulder exam charted above was following the narrative summary (NARSUM) and PEB, and appears to have been used by the FPEB. This exam indicated slight weakness, mild impingement signs, tenderness, and normal sensory exam.

At the VA Compensation and Pension (C&P) exam 6 months after separation, the CI reported continued pain with little relief from a nerve unit (TENS) or medications. She stated she had constant pain with flares 3x/week of hours duration, right arm weakness, occasional giving way, fatigability and a lack of endurance. There were also problems with tingling and paresthesias as well as occasional numbness of the right arm. “She does occasional wear a sling for comfort. During flare-ups, the veteran estimates, she has an additional limitation of ROM and functional ability to a decrease of 75% of her baseline. She denies episodes of dislocation or recurrent subluxation.” Exam is charted above with the examiner specifying “DeLuca versus Brown: Right Shoulder: On examination there is the presence of painful motion and weakness, as well as fatigability, in the right shoulder. Therefore, during flare-ups it is estimated that the veteran could possibly lose 50% of her baseline ROM that was measured today.” Sixteen months remote from separation, a VA C&P neurologic exam indicated shoulder exam that was rated at 20%. VA records indicate the CI underwent additional right shoulder surgery in April 2010. Based on a VA C&P exam in September 2010 demonstrating decreased ROM, the VA increased the right shoulder rating to 30% effective on 9 September 2010.

The Board directs attention to its rating recommendation based on the above evidence. There was no fixed neurologic deficit for peripheral nerve coding. No exam documented criteria approaching the “severe” muscle criteria for the shoulder. The Board considered the PT exam, coupled with the MEB exam to have the highest probative value for rating at separation. The preponderance of the record proximate to separation indicated ROM limitations closest to limitation at shoulder level.

The Board considered that rating at time of separation would ideally be under the VASRD §4.71a. (schedule of ratings–musculoskeletal system) as there was no muscle injury, and weakness was attributed to pain and disuse. The FPEB coding was not strictly IAW VASRD §4.73—schedule of ratings–muscle injuries and §4.56 (Evaluation of muscle disabilities); however, it provided the CI a higher rating than strict adherence to VASRD §4.71a. criteria would have permitted. The Board deliberated on coding change to 5099-5304 to indicate analogous coding of the shoulder at 20%, or 5201 at 20%, or no change in the FPEB’s 20% 5304 coding.

After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB 20% adjudication for the right shoulder condition, but a change in coding to indicate musculoskeletal (joint disability) with muscle system criteria (analogous to 5304) with final coding of 5099-5304 at 20%.

BOARD FINDINGS: IAW DoDI 6040.44, provisions of DoD or Military Department regulations or guidelines relied upon by the PEB will not be considered by the Board to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the right shoulder condition and IAW VASRD §4.71a. and §4.73, the Board unanimously recommends no change in the FPEB’s 20% adjudication, but changing the code to 5099-5304. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of her prior medical separation:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Rt Shoulder Pain S/P Injuries | 5099-5304 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111013, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs’ Treatment Record

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

XXXXXXXXXXXXXXX

Dear XXXXXXXXX:

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. § 1554a), PDBR Case Number PD-2011-00963.

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was not appropriate under the guidelines of the Veterans Administration Schedule for Rating Disabilities. Accordingly, the Board recommended modification of your assigned disability rating without re-characterization of your separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding, accept their recommendation and direct that your records be corrected as set forth in the attached copy of a Memorandum for the Chief of Staff, United States Air Force. The office responsible for making the correction will inform you when your records have been changed.

Sincerely,

Director

Air Force Review Boards Agency

Attachments:

1. Directive

2. Record of Proceedings

PDBR PD-2011-00963

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Physical Disability Board of Review and under the authority of Title 10, United States Code, Section 1554a (122 Stat. 466) and Title 10, United States Code, Section 1552 (70A Stat. 116) it is directed that:

The pertinent military records of the Department of the Air Force relating XXXXXXXXXXXX, be corrected to show that the diagnosis in her finding of unfitness was Right Shoulder Pain S/P Injuries, VASRD Code 5099-5304 rather than VASRD Code 5304, rated at 20%.

Director

Air Force Review Boards Agency